

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 0539-14  
Bill No.: Truly Agreed To and Finally Passed CCS for SCS for HS for HCS for HB 228  
Subject: State Attorney General; Business and Commerce; Merchandising Practices  
Type: Original  
Date: May 29, 2003

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**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
<b>FUND AFFECTED</b>	<b>FY 2004</b>	<b>FY 2005</b>	<b>FY 2006</b>
None			
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2004</b>	<b>FY 2005</b>	<b>FY 2006</b>
Merchandising Practices Revolving Fund	(\$217,816) to Unknown	(\$227,661) to Unknown	(\$233,573) to Unknown
<b>Total Estimated Net Effect on Other State Funds</b>	<b>(\$217,816) to Unknown</b>	<b>(\$227,661) to Unknown</b>	<b>(\$233,573) to Unknown</b>

Numbers within parentheses: ( ) indicate costs or losses.  
This fiscal note contains 7 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
None			
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

### FISCAL ANALYSIS

#### ASSUMPTION

Officials from the **Department of Revenue, Missouri House of Representatives, Missouri Senate**, and the **Office of State Public Defender** assume the proposed legislation would have no fiscal impact on their agencies.

In response to a previous version of this proposal, officials from the **Department of Economic Development** assumed the proposed legislation would have no fiscal impact on their agency.

Officials from the **Office of State Courts Administrator** assume the proposed legislation would have no fiscal impact on the courts.

In response to a previous version of this proposal, officials from the **Office of Prosecution Services** assumed the proposed legislation would have no fiscal impact on prosecutors.

ASSUMPTION (continued)

Officials from the **Office of Secretary of State (SOS)** assume the proposal creates a no-spam list in the Attorney General's Office for unsolicited commercial e-mail and could result in the Attorney General promulgating rules to implement the provisions of this act. These rules will be published in the *Missouri Register* and the *Code of State Regulations*. Based on experience with other divisions, the rules, regulations, and forms issued by the Committee could require as many as 34 pages in the *Code of State Regulations* and half again as many pages in the *Missouri Register*, as cost statements, fiscal notes, and the like are not repeated in the Code. The estimated cost of a page in the *Missouri Register* is \$23 and the estimated cost of a page in the *Code of State Regulations* is \$27. Based on these costs, the estimated cost of the proposal is \$2,091 in FY 04 and unknown in subsequent years. The actual cost could be more or less than the numbers given. The impact of this legislation in future years is unknown and depends upon the frequency and length of rules filed, amended, rescinded, or withdrawn.

**Oversight** assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which would require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process.

In response to a previous version of this proposal, officials from the **Department of Corrections (DOC)** assume they could not predict the number of new commitments which could result from the creation of the offense(s) outlined in the proposal. An increase in commitments would depend on the utilization of prosecutors and the actual sentences imposed by the courts.

If additional persons were sentenced to the custody of the DOC due to the provisions of this legislation, the DOC would incur a corresponding increase in operational costs either through incarceration (FY 02 average of \$35.52 per inmate per day, or an annual cost of \$12,965 per inmate) or through supervision provided by the Board of Probation and Parole (FY 02 average \$3.10 per offender, per day, or an annual cost of \$1,132 per offender).

The following factors contribute to DOC's minimal assumption:

- DOC assumes the narrow scope of the crime will not encompass a large number of offenders.
- The low felony status of the crime enhances the possibility of plea-bargaining or imposition of a probation sentence.

ASSUMPTION (continued)

- The probability exists that offenders would be charged with a similar but more serious offense or that sentences may run concurrent to one another.

In summary, supervision by the DOC through probation or incarceration would result in some additional costs, but DOC officials assume that the impact would be \$0 or a minimal amount that could be absorbed within existing resources.

Officials from the **Office of Attorney General (AGO)** assume this legislation will result in an unknown number of additional consumer complaints filed when a sender of unsolicited commercial e-mail fails to include either a 1-800 number or a valid sender operated return e-mail address in its original solicitation or fails to remove a recipient from its solicitation list after being requested to do so.

AGO assumes they would require two FTE Investigators (each at \$27,500 per year) to follow up on these complaints as well as complaints regarding child pornography pursuant to Section 573.052. In addition, the AGO anticipates the complexity of the above complaints will require an Assistant Attorney General IV (at \$50,000 per year) and a Paralegal (at \$22,500 per year) to determine which complaints are actionable under the law. This includes a determination of whether the e-mail is unsolicited, whether and when the recipient asked to be removed from the sender's solicitation list, and whether the e-mail violates other aspects of Chapter 407, RSMo.

The AGO estimates the total cost of the proposal to be \$217,816 in FY 04; \$227,661 in FY 05; and \$233,573 in FY 06. The AGO assumes these new costs would be appropriated out of the Merchandising Practices Revolving Fund.

**Oversight** assumes the AGO could recover unknown civil penalties through enforcement actions, which would be credited to the Merchandising Practices Revolving Fund.

FISCAL IMPACT - State GovernmentFY 2004  
(10 Mo.)

FY 2005

FY 2006

**MERCHANDISING PRACTICES  
REVOLVING FUND**Revenues – Office of Attorney General

Civil penalties

Unknown

Unknown

Unknown

Costs – Office of Attorney General

Personal Service (4 FTE)

(\$106,250)

(\$130,688)

(\$133,955)

Fringe Benefits

(\$42,999)

(\$52,889)

(\$54,211)

Equipment and Expense

(\$68,567)

(\$44,084)

(\$45,407)

Total Costs – AGO(\$217,816)(\$227,661)(\$233,573)**ESTIMATED NET EFFECT ON  
MERCHANDISING PRACTICES  
REVOLVING FUND**(\$217,816) to  
Unknown(\$227,661) to  
Unknown(\$233,573) to  
UnknownFISCAL IMPACT - Local GovernmentFY 2004  
(10 Mo.)

FY 2005

FY 2006

\$0\$0\$0FISCAL IMPACT - Small Business

Small businesses who use unsolicited electronic mail could experience a fiscal impact as a result of this legislation.

## DESCRIPTION

The proposed legislation would establish certain requirements for sending commercial electronic mail messages:

It would be a violation to send any commercial electronic mail message to any subscriber in the state with a false identity or with false or misleading information. Persons who initiate electronic transmissions, whether unsolicited or not, which solicit the purchase of, rental of, or investment in property, goods or services would be required to clearly state in the subject line their identity and as the first four letters of the subject line would be "ADV:" or if it obscene material the first eight characters of the subject line would be "ADV:ADLT."

The Attorney General could prosecute violations. Persons could be liable for civil penalties of up to \$5,000 per knowing violation, not to exceed \$25,000 per day, as well as sanctions for unlawful merchandising practices.

It would be a defense if the defendant has implemented due care to effectively prevent the transmission of unsolicited electronic mail messages. No action could be brought more than two years after the alleged violation was known or could have been known. A court could exercise personal jurisdiction over nonresidents.

An e-mail service provider would not be liable for unlawful merchandising due to the fact that they are an intermediary between the sender and recipient, that they provide transmission of the unsolicited commercial email over the providers computer network or facilities, or that they block messages in good faith which they believe violate the provisions of this act.

Upon receipt of information that child pornography is contained on a website, the Attorney General would investigate. Upon probable cause, the Attorney General would notify the website operator in writing of the child pornography. If the operator would promptly, but not longer than five days after notice, remove the material and as long as they are not the purveyor of the material, there would be civil immunity. If the material is not removed, the Attorney General could seek an injunction. These provisions would not be construed to create any defense to criminal charges.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

L.R. No. 0539-14

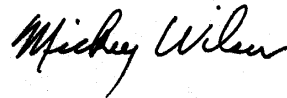
Bill No. Truly Agreed To and Finally Passed CCS for SCS for HS for HCS for HB 228

Page 7 of 7

May 29, 2003

### SOURCES OF INFORMATION

Office of Attorney General  
Office of State Courts Administrator  
Department of Economic Development  
Department of Corrections  
Department of Revenue  
Missouri House of Representatives  
Office of Prosecution Services  
Missouri Senate  
Office of State Public Defender  
Office of Secretary of State

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA  
Director  
May 29, 2003